38/38

FILED
JUN 21 1957
JOHN T. FEY, Clerk

No. 922

In the Supreme Court of the United States

OCTOBER TERM, 1956

ARTHUR THOMAS LILLIE, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING

STEPHEN V. CARNEY
Attorney for Petitioner
811 New World Life Building,
Seattle 4, Washington.

JOHN F. DORE
WILLIAM H. MULLEN
Of Counsel
304 Spring Street,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

No. 922

In the Supreme Court of the United States

OCTOBER TERM, 1956

ARTHUR THOMAS LELLES, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent*

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING

STEPHEN V. CAREY
Attorney for Petitioner
811 New World Life Building,
Seattle 4, Washington.

JOHN F. DORE
WILLIAM H. MULLEN
Of Counsel
304 Spring Street,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

INDEX

Page

Motion for Leave to File Petition for Rehearing of Order Denying Petition for Writ of Certiorari.... 1
Petition for Rehearing..... 3

TABLE OF CASES

Bartell v. U. S., 227 U.S. 427..... 6
Burton v. U. S., 202 U.S. 344..... 6
Cole v. Arkansas, 333 U.S. 196..... 6
U. S. v. Cruickshank, 92 U.S. 542..... 6
U. S. v. Simmons, 96 U.S. 360..... 6
Williams v. North Carolina, 317 U.S. 287..... 6

CONSTITUTION

United States Constitution,
Sixth Amendment 1, 3
Due Process Clause.....1, 3

COURT RULES

Rules of Criminal Procedure, Rule 7 (c)..... 5

In the

Supreme Court of the United States

ARTHUR THOMAS LELLES,	*Petitioner,*	No. 922
vs.		
UNITED STATES OF AMERICA,	*Respondent.*	

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, ARTHUR THOMAS LELLES, respectfully moves for leave to file the annexed petition for rehearing of the Order of this Court denying the petition for Writ of Certiorari in this case entered on May 27, 1957.

Rehearing is sought at this time because of other substantial grounds available to the petitioner which were not previously presented; namely, a violation of rights under the Sixth Amendment of the United States Constitution and the Due Process Clause.

May 18, 1957
Seattle, Washington

Counsel for Petitioner

STEPHEN V. CAREY
811 New World Life Building
Seattle, Washington

Of Counsel

JOHN F. DORE
304 Spring Street
Seattle, Washington

Of Counsel

WILLIAM H. MULLEN
304 Spring Street
Seattle, Washington

Supreme Court of the United States

ARTHUR THOMAS LELLES,	*Petitioner,*	No. 922
vs.		
UNITED STATES OF AMERICA,	*Respondent.*	

PETITION FOR REHEARING

ARTHUR THOMAS LELLES, the petitioner, respectfully prays that the Court grant rehearing of its Order of May 27, 1957, denying the petition for Writ of Certiorari in Cause Number 922, and that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case as prayed for in the petition filed April, 1957, herein.

Reasons for granting rehearing are other substantial grounds available to petitioner although not previously presented; namely, a violation of the Sixth Amendment of the U. S. Constitution and the Due Process Clause as shown herein:

Petitioner Lelles was charged by indictment in two counts for alleged violation of the Pure Food and Drug Laws.

In Count One, the Government charged *"Cultured Mushroom Industries, Inc."* "and *Arthur Thomas Lelles, an individual, at the time hereinafter mentioned, president of said corporation,"* of unlawfully causing to be introduced and delivered into interstate commerce adulterated cultured mushroom salt.

In Count Two, the Government charged *"Cultured Mushroom Industries, Inc."* "and *Arthur Thomas*

Lelles, an individual, at the time hereinafter mentioned, president of said corporation," of violating the same law in the same manner at a different time.

When the Government Prosecutors charged "Cultured Mushroom Industries, Inc." and Lelles, as its president, they knew that this specific corporation did not exist at the times charged.

Evidence showed that this specific corporation had been:

1. Dormant since 1941.
2. This corporation had been suspended in 1945 because of unpaid corporation license fees to the State of Washington.
3. That since 1947 this corporation had no bank account and had done no business since 1941 to the present and is still dead except for reinstatement of the corporate name with the Secretary of State.

The Government through its Pure Food and Drug Agency knew all and more; because prior to the indictment the Pure Food and Drug Agency in Seattle had held a hearing at which Lelles had testified.

So the Government admittedly charged the wrong corporation, (Page 6, Gov't. Brief) and thereby mislead Lelles in the charge and the preparation of his defense to his great prejudice.

During the trial it became clear that the Government was not and could not rely upon or substantiate their charge against Cultured Mushroom Industries, Inc. So that the Government then snidely brought in evidence and "actually" tried Lelles as President of an entirely different corporation, namely, Washington Mushroom

Industries, Inc., another separate and distinct legal entity.

It was admitted that the second uncharged corporation had made the shipments of adulterated food and had been paid for said interstate deliveries. But still no act, order or direction of the individual defendant, Lelles, was shown separately or as President of the second uncharged corporation.

At the conclusion of the Government's case the trial judge refused to grant the motion to acquit the charged corporation, but under Rule 29B withheld his decision and allowed the case to go to the jury. This, of course, rang the bell of doom for the defendant, as anyone could foresee, because such judicial hesitancy was prejudicial and deadly to the defendant.

This indictment was not a "plain, concise and definite written statement of the essential facts constituting the offense charged." Rule 7 (c) Rules of Criminal Procedure.

It was misleading. It was unfair. It was prejudicial and the jury thereby was greatly mislead and confused, as shown by the fact they returned a verdict of guilty on both counts against the charged corporation and against Lelles as an officer or an individual. (Such a general verdict was most indefinite and speculative.)

Thereafter, seeing the unfair verdict of the jury (based upon absolutely nothing except that Lelles had been and was president of both corporations) the Honorable Trial Judge dismissed the charged corporation.

In effect the general verdict against the defendant

was of a charge on which he never was actually tried or charged and this is a violation of due process.

Cole v. Arkansas, 333 U.S. 196, 202;

Williams v. North Carolina, 317 U.S. 287, 292.

It is obvious from the trial judge's own acts of dismissing the charged corporation after verdict that it had not been fair to allow the whole matter as it stood to go to the jury.

The defendant, Lelles, was entitled under the Sixth Amendment "to be informed of the nature and cause of the accusation." He was not actually so informed and when it became obvious during the trial that the WRONG corporation had been charged, the Government then tried Lelles for an uncharged crime. The defendant was mislead and the situation of dilemma which then arose became highly prejudicial and unfair to the defendant.

The Constitutional right to be informed of the nature and cause of the accusation entitled the accused to *insist* that the indictment apprise him of the actual crime charged with such certainty that he could plan and make his defense and protect himself after judgment against another trial on the same charge.

U. S. v. Cruickshank, 92 U.S. 542;

U. S. v. Simmons, 96 U.S. 360;

Bartell v. U. S., 227 U.S. 427;

Burton v. U. S., 202 U.S. 344.

The vicious unfair nature of this tragic situation is in part as follows:

That although the defendant, Lelles, was tried as an individual or officer of the charged corporation, he was ACTUALLY tried (as the record will show) of doing certain things as officer of another uncharged corporation, so that although in reality as an officer of the uncharged corporation tried he would be and is subject to a subsequent trial on the same facts pertaining to the uncharged corporation and he is subject to double jeopardy thereon in the future.

STEPHEN V. CAREY
Attorney for Petitioner
811 New World Life Building,
Seattle 4, Washington.

JOHN F. DORE
WILLIAM H. MULLEN
Of Counsel
304 Spring Street,
Seattle 4, Washington.